

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIGITTE STELZER,
Plaintiff,

- against -

BRIGHT MOUNTAIN MEDIA, INC.
Defendant.

Docket No. 1:17-cv-4167

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Brigitte Stelzer (“Stelzer” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Bright Mountain Media, Inc. (“Bright” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of the NYPD, FDNY and DHS staging an active shooter scenario, owned and registered by Stelzer, a New York based professional photographer. Accordingly, Stelzer seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Stelzer is a professional photojournalist in the business of licensing her photographs to online, print, and television stations for a fee having a usual place of business at 22-39 74th Street, East Elmhurst, New York 11370.

6. Upon information and belief, Bright is a corporation duly organized and existing under the laws of the State of Florida, with a place of business at 6400 Congress Avenue, Suite 2050, Boca Raton, Florida 33487. At all times material hereto, Bright has owned and operated a website at the URL: www.Firefightingnews.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Stelzer photographed the NYPD, FDNY and DHS staging an active shooter scenario (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Stelzer is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with US Copyright Office and was given Copyright Registration Number VA 2-026-482.

B. Defendant’s Infringing Activities

10. Upon information and belief, on October 4, 2016, Bright ran an article on the Website entitled *Some FDNT firefighters calling new ‘rescue task force’ units, ‘f-king disaster’*.

See <http://www.firefightingnews.com/fdny-firefighters-calling-new-rescue-task-force-units-fighting-disaster/>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Bright did not license the Photograph from Plaintiff for its article, nor did Bright have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST BRIGHT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Bright infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Bright is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Bright have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

19. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Bright be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 5, 2017

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